

Kluwer Mediation Blog

Mediation Inside Out

Andrea Maia (Mediar360 – Dispute Resolution) · Thursday, March 8th, 2018

During a trip to Vienna some time ago, I attended the “ICC Commission on Arbitration and ADR Meeting” where I had the opportunity to hear Toby Landau QC, a brilliant barrister and arbitrator from London, speaking about “Unreliable Recollections, False Memories and Witness Testimony”. He explained that memories are changeable and that experiences from past and present can influence how people perceive real facts. According to him, there are several different factors, which can influence how one builds memories, even questions made by third parties.

I was delighted with his presentation. Despite his focus being on arbitration, I could make several possible links to my own experience as a mediator. After his speech, I asked him for recommendations of further readings and left the meeting with a list of authors. One particular article really caught my attention: [False Memory](#), by Eryn J. Newman and Maryanne Garry.

Newman’s and Garry’s paper examines the nature of false memories, pursuing an understanding on how can people mistake things that never occurred for real memories. It shows many ways one can build false memories, such as: using prior knowledge to modify what we have read or witnessed; filling gaps, by adding details and guessing; sharing experiences with other people (when someone repeats someone else’s version of facts as their own). When making questions, even the choice of words might have an impact on the answers you will get. As an example, when people are asked, “How fast was the car, when it crashed?”, they tend to assume that the car was at a higher speed, and when the question is rephrased with “collided”, the outcome is normally surprisingly different. It concludes (little spoiler) that false memories happen when one confuses details that came from other sources, such as narratives or photos (and all the thoughts that came to mind after reviewing those materials), as being consequence of real experience. That is what they call a “source monitoring error”.

For those who had the opportunity to watch the amazing Disney movie called Inside Out, which tells the story of a young girl going through puberty, but from the perspective of her emotions acting as characters inside her mind, may find some similarities with the subject in question. Her feelings (Joy, Sadness, Anger, Disgust and Fear) walk through different areas of her mind and brain trying to find one lost memory of hers. They visit the place where the dream occur, the room of abstract thinking / the storage of old memories. At some point, when they take the train that goes to the long-term storage, Joy accidentally drops a box and its content spreads on the floor. She looks at several blocks on the floor, while trying to organize everything back, and says:

“Oh, these facts and opinions... Why do they look so similar?”

That particular scene made me laugh and still makes me smile when I remember it. This is exactly how our mind behaves, right?

Getting back to Newman and Garry's paper, they wrap it up by stating that false memories are a part of what we are, not a flaw. They consider it a part of a functional system that allows us to build illusional versions of reality, which in turn allows us to thinking into future and reconsidering our past. They sum up their article in such beautiful and meaningful words:

A memory system that allows us to reconstruct, rather than play back, is prone to error – but it also gives us the capacity to consider not only alternative pasts or how an event might have occurred, but also to consider our possible futures. Without this flexibility, we might be stuck with a past we cannot reconsider or revise and a future we can't anticipate or pre-experience.

Finally, it is impossible not to connect this with many cases I have dealt with as a mediator. Our work deals in great part with version of facts, narrative parts construct and their views of how things occurred. For me, learning more about false memories and how they can help us deal better with our understanding of the past and the future, will help me as a professional to better serve my clients when it comes to finding ways of developing alternatives and build new opportunities for their future.

P.S.: I was sad to hear that Professor Frank E. A. Sander passed away on February 25, 2018. His work was essential to the development of dispute resolution as an independent field of study. If today we can work with ADR and develop it further, it is because of pioneers like him. Thank you very much Professor Frank Sander, rest in peace

To make sure you do not miss out on regular updates from the Kluwer Mediation Blog, please [subscribe here](#).

Profile Navigator and Relationship Indicator

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Learn more about the newly-updated *Profile Navigator and Relationship Indicator*



This entry was posted on Thursday, March 8th, 2018 at 4:14 pm and is filed under [ADR](#), [memory](#), [Memory and Illusions](#), [Perception](#), [Uncategorized](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.